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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/528,846	03/20/2000	Doug Turner	013.0078	5404

4372 7590 08/13/2004

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EXAMINER

PARTON, KEVIN S

ART UNIT	PAPER NUMBER
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2153

DATE MAILED: 08/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/528,846

Applicant(s)

TURNER ET AL.

Examiner

Kevin Parton

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1, 7, and 13 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

4. Regarding claims 1, 7, and 13, the specification does not teach a software delegate "configured to control an amount of data and a size of at least one portion of said network object...based solely upon an operating state." Instead, the specification teaches a system that will download portions while the client is in an "idle" state and suspend downloading while the client is "busy" (page 10, paragraph 3). The size of the downloaded portion is not controlled; it is passively determined based on the activity of the client. Based on the teaching of the specification, any system that can download a portion of file while in an "idle" state and then resume downloading at a later time based on the operating state would be analogous to the current claims.

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5. Claims 2-6, 8-12, and 14-19 are dependent upon the rejected base claims.

Accordingly, they are rejected for the same reasons as the independent claims.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 2, 13, 14, and 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ubowski (USPN 6,618,758) in view of Perlman (USPN 6,237,039).

8. Regarding claim 1, Ubowski (USPN 6,618,758) teaches a system for downloading portions of a remotely located network object, comprising:

- a. A client (figure 1, element 110).
- b. A server facility configured to be accessed via an electronic data network by the client and to send data corresponding to at least one portion of a network object to the client via the electronic data network (figure 1, element 130; column 3, line 61 – column 4, line 3).
- c. A software delegate residing on the client and configured to control an amount of the data and a size of the at least one portion of the network object to be downloaded from the server facility to the client independent of a user of the client (column 3, lines 29-32, 40-44).
Note that a preferences file may be used to select download portions which is independent of the user.

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Although the system disclosed by Ubowski (USPN 6,618,758) shows substantial features of the claimed invention, it fails to disclose means wherein download decisions are based solely upon an operating state of the client.

Nonetheless, these features are well known in the art and it would have been an obvious modification of the system disclosed by Ubowski (USPN 6,618,758), as evidenced by Perlman (USPN 6,237,039).

In an analogous art, Perlman (USPN 6,237,039) discloses a system for the download of data wherein download decisions are based solely upon an operating state of the client (column 5, lines 13-15, 31-40). Please note that the system of Perlman (USPN 6,237,039) makes download decisions based on the times that the client is idle or busy. The size of the data is passively determined based on the idle time, this is analogous to the teachings of the current specification.

Given the teaching of Perlman (USPN 6,237,039), a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Ubowski (USPN 6,618,758) by making the downloaded portion decisions based solely upon the operating state of the client. This benefits the system by allowing the system to download data at the best possible time for the client to avoid disruption of normal operations.

9. Regarding claims 2 and 14, Ubowski (USPN 6,618,758) teaches all the limitations as applied to claims 1 and 13, respectively. He further teaches means wherein the electronic data network is the Internet (column 2, lines 46-47).

10. Regarding claims 5 and 17, although the system disclosed by Ubowski (USPN 6,618,758) (as applied to claims 1 and 16, respectively) shows substantial features of the claimed invention, it fails to disclose specifically means wherein the operating state is an idle state.

Nonetheless, these features are well known in the art and it would have been an obvious modification of the system disclosed by Ubowski (USPN 6,618,758), as evidenced by Perlman (USPN 6,237,039).

In an analogous art, Perlman (USPN 6,237,039) discloses a system for download of data over the Internet based on operating state wherein the operating state is an idle state (figure 5). Note that in the reference, data is downloaded when the client is idle.

Given the teaching of Perlman (USPN 6,237,039), a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Ubowski (USPN 6,618,758) by employing the use of the operating system idle time to download data. This benefits the system by providing the user with the best possible performance while active and for a reliable download during downtime.

11. Regarding claims 6 and 18, although the system disclosed by Ubowski (USPN 6,618,758) (as applied to claims 1 and 16, respectively) shows substantial features of the claimed invention, it fails to disclose means wherein the operating state is a busy state.

Nonetheless, these features are well known in the art and would have been an obvious modification of the system disclosed by Ubowski (USPN 6,618,758), as evidenced by Perlman (USPN 6,237,039).

In an analogous art, Perlman (USPN 6,237,039) discloses a system for download of data over the Internet based on operating state wherein the operating state is a busy state (figure 5).

Given the teaching of Perlman (USPN 6,237,039), a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Ubowski (USPN 6,618,758) by employing the stoppage of download when the client is busy. This benefits the system by providing the user with the best possible performance while active and for a reliable download during downtime.

12. Regarding claim 13, Ubowski (USPN 6,618,758) teach a system for facilitating downloading portions of a remotely located network object with means for:

- a. Using a client computer to access a server facility via an electronic data network (figure 1).
- b. Receiving, at the client computer, portions of a network object from the server facility (figure 1, element 130; column 3, line 61 – column 4, line 3).
- c. Storing the portions of a network object within the client computer to create locally a completely downloaded copy of the network object (column 3, lines 29-32). Note that “portions” can be downloaded up to the entire file.
- d. Controlling a size of the portions of the network object received from the server facility independent of a user of the client (column 3, lines 40-44).

Although the system disclosed by Ubowski (USPN 6,618,758) shows substantial features of the claimed invention, it fails to disclose means wherein download decisions are made based solely upon an operating state of the client computer.

Nonetheless, these features are well known in the art and it would have been an obvious modification of the system disclosed by Ubowski (USPN 6,618,758), as evidenced by Perlman (USPN 6,237,039). Please note that the system of Perlman (USPN 6,237,039) makes download decisions based on the times that the client is idle or busy. The size of the data is passively determined based on the idle time, this is analogous to the teachings of the current specification.

In an analogous art, Perlman (USPN 6,237,039) discloses a system for the download of data wherein download decisions are made based solely upon an operating state of the client computer (column 5, lines 13-15, 31-40).

Given the teaching of Perlman (USPN 6,237,039), a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Ubowski (USPN 6,618,758) by making the downloaded portion decisions based solely upon the operating state of the client. This benefits the system by allowing the system to download data at the best possible time for the client to avoid disruption of normal operations.

13. Regarding claim 16, although the system disclosed by Ubowski (USPN 6,618,758) (as applied to claim 13) shows substantial features of the claimed invention, it fails to disclose specifically means wherein the size of the portions of the network object in the controlling step is dependent on the operating state of the client computer.

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Nonetheless, these features are well known in the art and it would have been an obvious modification of the system disclosed by Ubowski (USPN 6,618,758), as evidenced by Perlman (USPN 6,237,039).

In an analogous art, Perlman (USPN 6,237,039) discloses a system for the download of data wherein the size of the portions of the network object in the controlling step is dependent on the operating state of the client computer (column 5, lines 13-15, 31-40).

Given the teaching of Perlman (USPN 6,237,039), a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Ubowski (USPN 6,618,758) by making the downloaded portion decisions based upon the operating state of the client. This benefits the system by allowing the system to download data at the best possible time for the client to avoid disruption of normal operations.

14. Regarding claim 19, Ubowski (USPN 6,618,758) teach all the limitations as applied to claim 13. They further teach means wherein the controlling step is performed by a software delegate residing on the computer (column 3, lines 40-44).

15. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ubowski (USPN 6,618,758) and Perlman (USPN 6,237,039) as applied to claim 1 above, and further in view of Young (USPN 6,477,522).

16. Regarding claim 3, although the system disclosed by Ubowski (USPN 6,618,758) and Perlman (USPN 6,237,039) (as applied to claim 1) shows substantial features of

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the claimed invention, it fails to disclose means wherein the software delegate is a Javascript applet.

Nonetheless, these features are well known in the art and would have been an obvious modification of the system disclosed by Ubowski (USPN 6,618,758) and Perlman (USPN 6,237,039), as evidenced by Young (USPN 6,477,522).

In an analogous art, Young (USPN 6,477,522) discloses a system for downloading of files or portions of file involving a software delegate wherein the software delegate is a Javascript applet (column 2, lines 48-54). Note that in the reference, the applet looks to multiple servers and can download a portion of the file from any.

Given the teaching of Young (USPN 6,477,522), a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Ubowski (USPN 6,618,758) and Perlman (USPN 6,237,039) by employing the use of an applet for distribution of the software delegate. Applets benefit the system by allowing any type of client to run the application and to access files in portions. The benefits can more easily be distributed to a wide range of users if applets are used.

17. Claims 4 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ubowski (USPN 6,618,758) and Perlman (USPN 6,237,039) as applied to claims 1 and 13 above, and further in view of Bodin et al. (USPN 6,061,733).

18. Regarding claim 4, although the system disclosed by Ubowski (USPN 6,618,758) and Perlman (USPN 6,237,039) (as applied to claim 1) shows substantial features of

the claimed invention, it fails to disclose means wherein the amount of data is a range of bytes and the size of the that at least one portion is dependent on the operating state.

Nonetheless, these features are well known in the art and it would have been an obvious modification of the system disclosed by Ubowski (USPN 6,618,758) and Perlman (USPN 6,237,039), as evidenced by Bodin et al. (USPN 6,061,733).

In an analogous art, Bodin et al. (USPN 6,061,733) discloses a system for the downloading of file portions wherein the amount of data is a range of bytes and the size of the at least one portion is dependent on the operating state (column 3, lines 5-15).

Given the teaching of Bodin et al. (USPN 6,061,733), a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Ubowski (USPN 6,618,758) and Perlman (USPN 6,237,039) by employing a range of bytes as the limiter for the file portion. This benefits the system because it applies to any type of file.

19. Regarding claim 15, although the system disclosed by Ubowski (USPN 6,618,758) and Perlman (USPN 6,237,039) (as applied to claim 13) shows substantial features of the claimed invention, it fails to disclose means wherein the size of the portions of the network object in the controlling step is a range of bytes.

Nonetheless, these features are well known in the art and it would have been an obvious modification of the system disclosed by Ubowski (USPN 6,618,758) and Perlman (USPN 6,237,039), as evidenced by Bodin et al. (USPN 6,061,733).

In an analogous art, Bodin et al. (USPN 6,061,733) discloses a system for the downloading of file portions wherein the size of the portions of the network object in the controlling step is a range of bytes (column 3, lines 5-15).

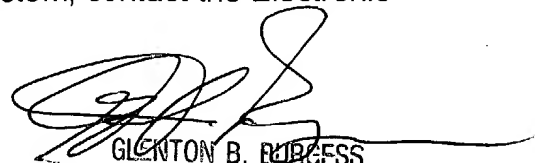
Given the teaching of Bodin et al. (USPN 6,061,733), a person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Ubowski (USPN 6,618,758) and Perlman (USPN 6,237,039) by employing a range of bytes as the limiter for the file portion. This benefits the system because it applies to any type of file.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Parton whose telephone number is (703)306-0543. The examiner can normally be reached on M-F 8:00AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess can be reached on (703)305-4792. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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Examiner
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